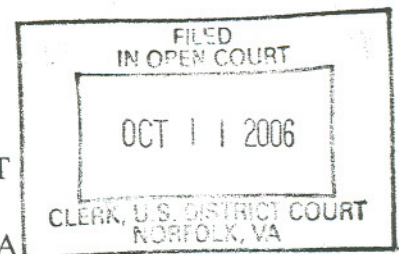


IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA



Norfolk Division

UNITED STATES OF AMERICA

v.

HOWARD WELSH,

Defendant.

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CRIMINAL NO. 2:04cr148

PLEA AGREEMENT

Chuck Rosenberg, United States Attorney for the Eastern District of Virginia, Robert J. Seidel, Jr., Blair Perez, Joseph DePadilla, and Kevin Comstock, Assistant United States Attorneys, the defendant, Howard Welsh, and the defendant's counsel have entered into an agreement pursuant to Rule 11(c)(1)(A) of the Federal Rules of Criminal Procedure. The terms of the agreement are as follows:

**1. Offense and Maximum Penalties**

The defendant agrees to plead guilty to Counts One, Two, Three, and Twenty-Seven of the indictment. Count One charges Conspiracy to Commit Mail and Wire Fraud, in violation of Title 18, United States Code, Section 371. The maximum penalties for this offense are a maximum term of imprisonment of five (5) years, a special assessment, a fine of \$250,000.00, and no more than three years supervised release. Count Two and Three charges Wire Fraud, in violation of Title 18, United States Code, Section 1343. The maximum penalties for this offense are a term of imprisonment of five (5) years, a special assessment, full restitution, a fine of \$ 250,000.00, and no more than three years supervised release. Count Twenty-Seven charges Mail Fraud, in violation of

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Title 18, United States Code, Section 1341. The maximum penalties for this offense are a term of imprisonment of five (5) years, a special assessment, full restitution, a fine of \$ 250,000.00, and no more than three years supervised release. The defendant understands that this supervised release term is in addition to any prison term the defendant may receive, and that a violation of a term of supervised release could result in the defendant being returned to prison for the full term of supervised release.

**2. Factual Basis for the Plea**

The defendant will plead guilty because the defendant is in fact guilty of the charged offenses. The defendant admits the facts set forth in the statement of facts filed with this plea agreement and agrees that those facts establish guilt of the offense charged beyond a reasonable doubt. The statement of facts, which is hereby incorporated into this plea agreement, constitutes a stipulation of facts for purposes of Section 1B1.2(a) of the Sentencing Guidelines.

**3. Contingent Nature of Plea**

The defendant's plea agreement is conditioned upon the plea of guilty of his co-defendant Lee Hope Thrasher pursuant to her plea agreement.

**4. Sentencing Advisement and Stipulation**

a. The defendant understands that under Section 5G1.2(d) of the Sentencing Guidelines that based on the stipulated conduct in the Statement of Facts, the estimated loss figures, and the relevant conduct in the case, the sentence imposed on imposed on Counts One, Two, Three and Twenty-Seven may be imposed consecutive to each other, meaning that the defendant is on notice that he may serve a term of imprisonment of no more than twenty (20) years imprisonment. The parties agreed that this prediction or agreement or stipulation is not binding on the Court or probation

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under the advisory guideline range.

b. The defendant and the government agree that based on the need for the mandatory restitution owed to the victims and the agreed mandatory forfeiture judgment in this case, the government will not argue for a fine to be imposed. This agreement is not binding on the Court and has no effect whatsoever on any mandatory restitution that may be ordered pursuant to Title 18, United States Code, Sections 3613 or mandatory forfeiture that may be imposed under this agreement.

#### **5. Assistance and Advice of Counsel**

The defendant is satisfied that the defendant's attorney has rendered effective assistance. The defendant understands that by entering into this agreement, defendant surrenders certain rights as provided in this agreement. The defendant understands that the rights of criminal defendants include the following: (a) the right to plead not guilty and to persist in that plea; (b) the right to a jury trial; (c) the right to be represented by counsel – and if necessary have the court appoint counsel – at trial and at every other stage of the proceedings; and (d) the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses.

#### **6. Role of the Court and the Probation Office**

The defendant understands that the Court has jurisdiction and authority to impose any sentence within the statutory maximum described above but that the Court will determine the defendant's actual sentence in accordance with 18 U.S.C. § 3553(a). The defendant understands that the Court has not yet determined a sentence and that any estimate of the advisory sentencing range under the U.S. Sentencing Commission's Sentencing Guidelines Manual the defendant may have

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received from the defendant's counsel, the United States, or the Probation Office, is a prediction, not a promise, and is not binding on the United States, the Probation Office, or the Court. Additionally, pursuant to the Supreme Court's decision in *United States v. Booker*, 125 S. Ct. 738, the Court, after considering the factors set forth in 18 U.S.C. § 3553(a), may impose a sentence above or below the advisory sentencing range, subject only to review by higher courts for reasonableness. The United States makes no promise or representation concerning what sentence the defendant will receive, and the defendant cannot withdraw a guilty plea based upon the actual sentence.

**7. Waiver of Appeal and Review**

The defendant also understands that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Nonetheless, the defendant knowingly waives the right to appeal the conviction and any sentence within the statutory maximum described above (or the manner in which that sentence was determined) on the grounds set forth in Title 18, United States Code, Section 3742 or on any ground whatsoever, in exchange for the concessions made by the United States in this plea agreement. This agreement does not affect the rights or obligations of the United States as set forth in Title 18, United States Code, Section 3742(b). The defendant also waives the right to challenge the conviction, sentence, or the manner in which the conviction or sentence were determined, in any collateral attack, including a motion brought under Title 28, United States Code, Section 2255.

**8. Special Assessment**

Before sentencing in this case, the defendant agrees to pay a mandatory special assessment of one hundred dollars (\$100.00) per count of conviction.

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**9. Payment of Monetary Penalties**

The defendant understands and agrees that, pursuant to Title 18, United States Code, Sections 3613, whatever monetary penalties are imposed by the Court will be due and payable immediately and subject to immediate enforcement by the United States as provided for in Section 3613. Furthermore, the defendant agrees to provide all of his financial information to the United States and the Probation Office and, if requested, to participate in a pre-sentencing debtor's examination. If the Court imposes a schedule of payments, the defendant understands that the schedule of payments is merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment. If the defendant is incarcerated, the defendant agrees to participate in the Bureau of Prisons' Inmate Financial Responsibility Program, regardless of whether the Court specifically directs participation or imposes a schedule of payments.

**10. Restitution for Offenses of Conviction and Other Offenses**

a. The defendant agrees to the entry of a Restitution Order for the full amount of the victims' losses. The defendant also agrees that restitution is due to the victim(s) of an offense listed in Title 18, United States Code, Section 3663A(c)(1)(A) that is not the offense of conviction but nonetheless gave rise to this plea agreement. The parties further agree that any final restitution amount ordered by the court will be offset by any funds already forfeited as of the date of this agreement and set to be remitted to the victims or otherwise returned to the victims, as verified by the United States and the Court. The parties further agree that any forfeiture agreement has no impact whatsoever on any restitution or fine obligations that may arise pursuant to Title 18, United States Code, Section 3663 to be imposed by the Court.

b. The defendant further understands the Court will determine the precise restitution

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amount owed to the victims and that amount will become incorporated into a restitution judgment in this case.

**11. Immunity from Further Prosecution in this District**

The United States will not further criminally prosecute the defendant in the Eastern District of Virginia for the specific conduct described in the indictment or statement of facts.

**12. Dismissal of Other Counts**

As a condition of the execution of this agreement and the Court's acceptance of the defendant's plea of guilty, the United States will move to dismiss the remaining counts of the indictment against this defendant at the time of sentencing in this case.

**13. Defendant's Cooperation**

The defendant agrees to cooperate fully and truthfully with the United States, and provide all information known to the defendant regarding any criminal activity as requested by the government. In that regard: (a) The defendant agrees to testify truthfully and completely at any grand juries, trials or other proceedings, (b) The defendant agrees to be reasonably available for debriefing and pre-trial conferences as the United States may require, (c) The defendant agrees to provide all documents, records, writings, or materials of any kind in the defendant's possession or under the defendant's care, custody, or control relating directly or indirectly to all areas of inquiry and investigation, (d) The defendant agrees that, upon request by the United States, the defendant will voluntarily submit to polygraph examinations to be conducted by a polygraph examiner of the United States' choice, (e) the defendant agrees that the Statement of Facts is limited to information to support the plea. The defendant will provide more detailed facts relating to this case during ensuing debriefings, (f) the defendant is hereby on notice that the defendant may not violate any

federal, state, or local criminal law while cooperating with the government, and that the government will, in its discretion, consider any such violation in evaluating whether to file a motion for a downward departure or reduction of sentence, and (g) Nothing in this agreement places any obligation on the government to seek the defendant's cooperation or assistance.

**14. Use of Information Provided by the Defendant Under This Agreement**

Pursuant to Section 1B1.8 of the Sentencing Guidelines, no truthful information that the defendant provides pursuant to this agreement will be used to enhance the defendant's guidelines range. Further, the United States agrees not to use any truthful information provided pursuant to this agreement against the defendant in any other federal criminal prosecution against the defendant in the Eastern District of Virginia. The United States will bring this plea agreement and the full extent of the defendant's cooperation to the attention of other prosecuting offices if requested. Nothing in this plea agreement, however, restricts the Court's or Probation Office's access to information and records in the possession of the United States. Furthermore, nothing in this agreement prevents the government in any way from prosecuting the defendant should the defendant provide false, untruthful, or perjurious information or testimony or from using information provided by the defendant in furtherance of any forfeiture action, whether criminal or civil, administrative or judicial.

**15. Defendant Must Provide Full, Complete and Truthful Cooperation**

This plea agreement is not conditioned upon charges being brought against any other individual. This plea agreement is not conditioned upon any outcome in any pending investigation. This plea agreement is not conditioned upon any result in any future prosecution which may occur because of the defendant's cooperation. This plea agreement is not conditioned upon any result in any future grand jury presentation or trial involving charges resulting from this investigation. This



plea agreement is conditioned upon the defendant providing full, complete and truthful cooperation.

**16. Motion for a Downward Departure**

a. Except as provided for herein, the parties agree that the United States reserves the right to seek any departure from the applicable sentencing guidelines, pursuant to Section 5K1.1 of the Sentencing Guidelines and Policy Statements, or any reduction of sentence pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure, if, in its sole discretion, the United States determines that such a departure or reduction of sentence is appropriate. The defendant waives any right to challenge the decision of the United States to make such a motion or the extent of the recommendation made by the United States.

b. However, notwithstanding paragraph 16 a and provided that the defendant complies with all other terms in this plea agreement, if the defendant substantially assists in the investigation and prosecution of others involved in criminal activities and if the defendant returns or causes the return of the funds to satisfy full restitution as ordered by the Court to a domestic bank account designated by the United States, then the United States will file for a motion under Rule 35(b) of the Federal Rules of Criminal Procedure and it will recommend a fifty percent (50%) sentence reduction. If the defendant fails to provide substantial assistance and fails to return or cause the return of the funds to satisfy full restitution as ordered by the Court, the defendant will be bound the terms of the plea agreement and the United States will not be obligated to move for a sentence reduction under Rule 35(b) as set forth in paragraph 16 a above.

c. In all respects herein, the defendant understands that this agreement is not binding on the sentencing court and the Court retains all of its discretion to rule on such motions, including the extent of any reduction if the said motion is granted

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#### **17. The Defendant's Obligations Regarding Assets Subject to Forfeiture**

The defendant agrees to identify all assets over which the defendant exercises or exercised control, directly or indirectly, within the past ten years, or in which the defendant has or had during that time any financial interest. The defendant agrees to take all steps as requested by the United States to obtain from any other parties by any lawful means any records of assets owned at any time by the defendant. The defendant agrees to undergo any polygraph examination the United States may choose to administer concerning such assets and to provide and/or consent to the release of the defendant's tax returns for the previous ten years. Defendant agrees to forfeit to the United States all of the defendant's interests in any asset of a value of more than \$1000 that, within the last ten years, the defendant owned, or in which the defendant maintained an interest, the ownership of which the defendant fails to disclose to the United States in accordance with this agreement.

#### **18. Forfeiture Agreement**

The defendant agrees to forfeit all interests in any mail or wire fraud related assets that the defendant owns or over which the defendant exercises control, directly or indirectly, as well as any property that is traceable to, derived from, fungible with, or a substitute for property that constitutes the proceeds of his offense or offenses charged in the indictment. The defendant further agrees to waive all interest in the asset(s) in any administrative or judicial forfeiture proceeding, whether criminal or civil, state or federal. The defendant agrees to consent to the entry of orders of forfeiture for such property and waives the requirements of Federal Rules of Criminal Procedure 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. The defendant understands that the forfeiture of assets is part of the sentence that may be imposed in this case. In that regard the

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defendant agrees to a mandatory forfeiture monetary judgment in the amount of the sum of at least the amount of restitution ordered by the Court.

**19. Waiver of Further Review of Forfeiture**

The defendant further agrees to waive all constitutional and statutory challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this Plea Agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment. The defendant also waives any failure by the Court to advise the defendant of any applicable forfeiture at the time the guilty plea is accepted as required by Rule 11(b)(1)(J). The defendant agrees to take all steps as requested by the United States to pass clear title to forfeitable assets to the United States, and to testify truthfully in any judicial forfeiture proceeding. The defendant understands and agrees that all property covered by this agreement is subject to forfeiture as proceeds of illegal conduct, property facilitating illegal conduct, property involved in illegal conduct giving rise to forfeiture and/or substitute assets for property otherwise subject to forfeiture.

**20. Breach of the Plea Agreement and Remedies**

This agreement is effective when signed by the defendant, the defendant's attorney, and an attorney for the United States. The defendant agrees to entry of this plea agreement at the date and time scheduled with the Court by the United States (in consultation with the defendant's attorney). If the defendant withdraws from this agreement, or commits or attempts to commit any additional federal, state or local crimes, or otherwise violates any provision of this agreement, then: (a) the United States will be released from its obligations under this agreement. The defendant, however, may not withdraw the guilty plea entered pursuant to this agreement; (b) the defendant will be

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subject to prosecution for any federal criminal violation, including, but not limited to, perjury and obstruction of justice, that is not time-barred by the applicable statute of limitations on the date this agreement is signed; and (c) any prosecution, including the prosecution that is the subject of this agreement, may be premised upon any information provided, or statements made, by the defendant, and all such information, statements, and leads derived therefrom may be used against the defendant. The defendant waives any right to claim that statements made before or after the date of this agreement, including the statement of facts accompanying this agreement or adopted by the defendant and any other statements made pursuant to this or any other agreement with the United States, should be excluded or suppressed under Fed. R. Evid. 410, Fed. R. Crim. P. 11(f), the Sentencing Guidelines or any other provision of the Constitution or federal law. Any alleged breach of this agreement by either party shall be determined by the Court in an appropriate proceeding at which the defendant's disclosures and documentary evidence shall be admissible and at which the moving party shall be required to establish a breach of the plea agreement by a preponderance of the evidence.

#### **21. Nature of the Agreement and Modifications**

This written agreement constitutes the complete plea agreement between the United States, the defendant, and the defendant's counsel. The defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in writing in this plea agreement, to cause the defendant to plead guilty. Any modification of this plea agreement shall be valid only as set forth in writing in a supplemental or revised plea

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agreement signed by all parties.

Chuck Rosenberg  
United States Attorney


By: \_\_\_\_\_

  
Blair Perez  
Assistant United States Attorney

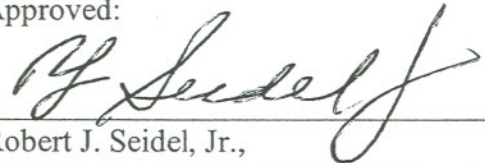
By: \_\_\_\_\_

  
Joseph DePadilla  
Assistant United States Attorney

By: \_\_\_\_\_

  
Kevin M. Comstock  
Assistant United States Attorney

Approved:

  
Robert J. Seidel, Jr.,  
Supervisory Assistant United States Attorney







Defendant's Signature: I hereby agree that I have consulted with my attorney and fully understand all rights with respect to the pending criminal indictment. Further, I fully understand all rights with respect to 18 U.S.C. § 3553 and the provisions of the Sentencing Guidelines Manual that may apply in my case. I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand this agreement and voluntarily agree to it.

Date: 9/29/06 H. Welsh.  
HOWARD WELSH

Defense Counsel Signature: I (we) am (are) counsel for the defendant in this case. I (we) have fully explained to the defendant the defendant's rights with respect to the pending indictment. Further, I (we) have reviewed 18 U.S.C. § 3553 and the Sentencing Guidelines Manual, and I (we) have fully explained to the defendant the provisions that may apply in this case. I (we) have carefully reviewed every part of this plea agreement with the defendant. To my (our) knowledge, the defendant's decision to enter into this agreement is an informed and voluntary one.

Date: 9/29/06 Jeffrey A. Swartz  
JEFFREY A. SWARTZ,  
COUNSEL FOR THE DEFENDANT

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U. S. DEPARTMENT OF JUSTICE  
Statement of Special Assessment Account

This statement reflects your special assessment only. There may be other penalties imposed at sentencing.

| ACCOUNT INFORMATION |              |
|---------------------|--------------|
| CRIM. ACTION NO.:   | 2:04cr148    |
| DEFENDANT'S NAME:   | Howard Welsh |
| PAY THIS AMOUNT:    | \$ 400.00    |

INSTRUCTIONS:

1. **MAKE CHECK OR MONEY ORDER PAYABLE TO:**  
*CLERK, U.S. DISTRICT COURT*
2. **PAYMENT MUST REACH THE CLERK'S OFFICE BEFORE YOUR SENTENCING DATE**
3. **PAYMENT SHOULD BE SENT TO:**

|                     | In person (9 AM to 4 PM)   | By mail:  |
|---------------------|--|---|
| Alexandria cases:   | Clerk, U.S. District Court<br>401 Courthouse Square<br>Alexandria, VA 22314                                  |   |
| Richmond cases:     | Clerk, U.S. District Court<br>1000 E. Main Street, #307<br>Richmond, VA 23219                                |   |
| Newport News cases: | Clerk, U.S. District Court<br>101 - 25 <sup>th</sup> Street, 2 <sup>nd</sup> Floor<br>Newport News, VA 23607 | Clerk, U.S. District Court<br>P. O. Box 494<br>Newport News, VA 23607 |
| Norfolk cases:      | Clerk, U.S. District Court<br>600 Granby Street<br>Norfolk, VA 23510   |   |

4. **INCLUDE DEFENDANT'S NAME ON CHECK OR MONEY ORDER**
5. **ENCLOSE THIS COUPON TO INSURE PROPER and PROMPT APPLICATION OF PAYMENT**